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Mayu Terada

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# THE CHANGING NATURE OF BUREAUCRACY AND GOVERNING STRUCTURE IN JAPAN

Mayu Terada\*

*Abstract:* This paper analyzes and criticizes changes in the relationship between politics and the bureaucracy, in Japan up to the present from the viewpoint of administrative organizations and related public law system. Drastic changes in the legal system, or legal reform, may sometimes undermine the true intention of the policy and its implementation. Thus, bringing political leadership in administrative decision-making bodies cannot be easily concluded as better or worse than the complete separation of administration and government. To analyze this matter in detail, this paper looks at the following points: 1) Analysis of the operation of the limited political appointment system under the one-party dominance by the Liberal Democratic Party and several attempts of administrative reform; 2) Changes in the government in 1993 that broke the Liberal Democratic Party's rule and subsequent changes in executive personnel and political leadership by the prime minister's office; and 3) The establishment of the Cabinet Bureau of Personnel Affairs in May 2014, which strengthened the involvement of the Cabinet in the executive staff personnel. Through an analysis of these changes, the institutional basis of the current phenomenon of increasing enforcement power and expanding administrative power is presented. Then this article considers current problems of democratic legitimacy within institutional limitations and policymaking, coordination of political leadership and securing administrative expertise. As a conclusion, this paper considers the requirement of separation of power in Japan and possible solutions to the increasing influence of political leadership on administrative power.

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## I. INTRODUCTION

The executive power of the Cabinet is currently expanding in Japan.<sup>1</sup> At the same time, we can see the change in the relationship between politicians

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\* Associate Professor of Law, International Christian University. E-mail: tmayu@icu.ac.jp. Author is sincerely grateful to Professor Cheng-Yi Huang, Professor Narufumi Kadomatsu and Professor Takashi Nishio for insightful advices and the editors for their comments.

<sup>1</sup> Often described as *Kantei-Syudo* in Japanese. YU UCHIYAMA (内山融), KOIZUMI SEIKEN, 'PATHOS NO SHUSYO' HA NANI WO KAETANOKA (小泉政権-「パトスの首相」は何を変えたのか) [KOIZUMI ADMINISTRATION- WHAT DID THE "PATHOS PRIME MINISTER" CHANGE?] 18–19 (2007); KENGO SOGA (曾我謙悟), GENDAI NIHON NO KANRYOUSEI (現代日本の官僚制) [CONTEMPORARY JAPANESE BUREAUCRACY], 186–91 (2016); MASATSUGU ITO (伊藤正次), TŌCHI-KIKŌ, -NAIKAKU SHUDŌ TAISEI NO RISOŪ TO GENJITSU (統治機構：内閣主導體制の理想と現実) [GOVERNING INSTITUTION: IDEALS AND REALITY OF THE CABINET LEADING SYSTEM] (Akira Morita & Toshiyuki Kanai eds., 2012); AKIRA MORITA (森田朗) & TOSHIYUKI KANAI (金井利之) SEISAKU HENYŌU TO SEIDOSEKKEI (政策変容と制度設計) [POLICY CHANGES AND SYSTEM DESIGNS] 32–44 (2012). See also Akiko Izumo (出雲明子), KŌUMUIN SEIDO KAIKAKU TO SEIJI SHUDŌ (公務員制度改革と政治主導) [POLITICAL DOMINANCE AND CIVIL SERVANT SYSTEM REFORM] 378–85 (2014); TAKASHI NISHIO (西尾隆), KŌUMUIN-SEI (公務員制) [CIVIL SERVANT SYSTEM] 207 (2018).

and bureaucrats.<sup>2</sup> In fact, there have been various legal system reforms and amendments to laws in the last twenty years that enabled this increase in “political leadership,” and the public service system reform accompanied the change.<sup>3</sup> The way power is executed also differs. Even though other countries may differ, over time,<sup>4</sup> it can also be pointed out that change itself is not considered always bad, and separation of power, which is desired and required in Japan, may be viewed differently in other countries.<sup>5</sup> However, possible ways for political leadership to manifest will surely differ from country to country.<sup>6</sup> When considering the style of separation of power required in Japan,<sup>7</sup> we need to consider how to avoid abuse of power. With respect to this point, constructing a stable bureaucratic system and maintaining and securing administrative expertise in the administration have been ways to stop the misuse of administrative and executive powers in Japan.<sup>8</sup> Therefore, it is necessary to verify whether the changing nature of administrative power, which occurred due to the institutional change in “political leadership” over the last twenty years was appropriate or not.

In other words, it is better to make all procedures and processes transparent when implementing policies in a democratic government.<sup>9</sup> At the same time, the actual administration is usually more efficient and effective when bureaucrats are able to grasp the current situation precisely, and actively make public policy with a certain degree of discretion.<sup>10</sup> The Japanese bureaucratic system has traditionally been considered important and strong

<sup>2</sup> NISHIO, *supra* note 1, at 167–73.

<sup>3</sup> *Tokusyū: Gyosei Kaikaku No Rinen, Genjyō, Tembō* (特集: 行政改革の理念、現状、展望) [Special Edition: Administrative Reform's Idea Principles, Current Situation, and Prospective] 1161 JURIST 71–76 (Aug. 1999); NISHIO, *supra* note 1, at 153–85.

<sup>4</sup> SOGA, *supra* note 1, at 193.

<sup>5</sup> MIKITAKA MASUYAMA (増山幹高), RIPPŌU TO KENRYOKU BUNRITSU (立法と権力分立) [LEGISLATIVE POWER AND DEMOCRACY] 35–42 (2015); TAKEHIRO OHYA (大屋雄裕), SAIBAN NO GENTEN (裁判の原点) [ORIGIN OF COURTS] 105–29 (2018).

<sup>6</sup> SOGA, *supra* note 1, at 23–24.

<sup>7</sup> Article 41, Article 65 and Article 76 of Japanese Constitution is considered as the foundation of separation of power. See OHYA, *supra* note 5.

<sup>8</sup> NISHIO, *supra* note 1, at 25–26, 76–79.

<sup>9</sup> Transparency was one of the keywords of the administrative reform especially a reform called central government reform conducted in 2001. See Yoichi Ohashi (大橋洋一), *Chuo Seifu Kaikaku-Seisakukeiseikinō no Kōudoka* (中央政府改革—政策形成機能の高度化) [Central Government Reform – Enhancement of Policy Formation Functionally], in TOKUSYŪ: GYOSEI KAIKAKU NO RINEN, GENJYŌ, TEMBŌU (特集: 行政改革の理念、現状、展望) [SPECIAL EDITION: ADMINISTRATIVE REFORM'S IDEA PRINCIPLES, CURRENT SITUATION, AND PROSPECTIVE] 71–76 (1999).

<sup>10</sup> See MAX WEBER, *BÜROKRATIE, GRUNDRIß DER SOZIALÖKONOMIK* 650–78 (1921).

since prewar days due to its focus on education and efficacy.<sup>11</sup> In Japan, bureaucrats have traditionally been hired through a merit system that requires a standard qualification exam. The merit system aims for political neutrality of staff, particularly in regards to the relationship between bureaucracy and political authority. A primary characteristic of the parliamentary cabinet system under the (mainly) one-party dominance by the Liberal Democratic Party (LDP)<sup>12</sup> is the limited influence of the Cabinet. One of the reasons for this limitation is the high turnover in the prime minister position over the last decade.<sup>13</sup> The LDP's one-party dominance has lasted in a manner that is different from before. It seems likely to last for many years, or even longer. It can be said that the existence of a bureaucratic organization centered around this kind of a merit system has contributed to the LDP's long administration and cabinet's execution of the administrative power.

This paper examines the historical changes in the relationship between politics and the bureaucracy, up to the present, from the viewpoint of administrative organizations and related public law systems, and attempts to analyze and criticize the present situation. Drastic changes in the legal system or legal reform may sometimes undermine the true intention of policy and its implementation. Thus, it cannot be easily concluded that promoting political leadership in administrative decision-making bodies is better or worse than the complete separation of administration and government. To consider this matter in detail, this paper looks at the following points after briefly looking back at the bureaucratic system in Japan under historical context. This paper begins first with an analysis of the operation of the limited political appointment system under the one-party dominance by the LDP and several attempts of administrative reform. Second, it discusses the changes in government in 1993 that broke the LDP's rule and subsequent changes in executive personnel and political leadership by the prime minister's office. Third, this paper discusses the Cabinet Bureau of Personnel Affairs, which was established in May 2014 and strengthened the involvement of the Cabinet

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<sup>11</sup> KIYOAKI TSUJI (辻清明), *KŌUMUNSEI NO KENKYŪ* (公務員制の研究) [RESEARCH FOR CIVIL SERVANT SYSTEM REFORM] 151–62 (1991); KIYOAKI TSUJI (辻清明), *KŌUMUNSEI NO KENKYŪ* (公務員制の研究) [RESEARCH ON CIVIL SERVANT SYSTEM REFORM] 151–62 (1991); KIYOAKI TSUJI (辻清明), *SHIMPAN NIHON KANRYŌUSEI NO KENKYU*, (新版日本官僚制の研究) [UPDATED. RESEARCH ON JAPANESE BUREAUCRACY] 24 (1969). *See also*, NISHIO, *supra* note 1, at 76–79.

<sup>12</sup> Relationship between bureaucracy and cabinet is analyzed as bureaucratic cabinet. *See* KEIICHI MATSUSHITA (松下圭一), SEIJI, *GYOUSEI NO KANGAEKATA* (政治・行政の考え方) [HOW POLITICAL AND ADMINISTRATIVE THINK] 79–94 (1998); JIRO YAMAGUCHI (山口二郎), *NAIKAKU SEIDO* (内閣制度) [CABINET SYSTEM] (2007).

<sup>13</sup> NISHIO, *supra* note 1, at 96–98.

in management of executive staff personnel, and the usage of Vice Minister and Parliamentary Secretary system. Through the analysis of these changes, this paper presents the institutional basis of the current phenomenon of strengthening enforcement power or expanding administrative power. Then, this paper will discuss current problems of democratic legitimacy within institutional limitations and policymaking, coordination of political leadership, and securing administrative expertise. As a conclusion, this paper considers the requirement of separation of power in Japan and a possible solution to the influence of political leadership on administrative power.

## II. BUREAUCRACY IN JAPAN IN HISTORICAL CONTEXT—FROM EMPEROR’S BUREAUCRATS TO THE SERVANTS OF THE WHOLE COMMUNITY

### A. *Continuity of Bureaucratic System*

According to Article 15 of the Constitution of Japan, “The people have the inalienable right to choose their public officials and to dismiss them. All public officials are servants of the whole community and not of any group thereof.”<sup>14</sup> The constitutional principle of this clause also points out 1) popular sovereignty—the principle of democratic control over civil servants—and 2) the personality of public servants as “servants of the whole community.”<sup>15</sup>

The bureaucracy in Japan is a continuation of the pre-war civil service system.<sup>16</sup> First, the appointment system for government officials was transformed into a formal system when the cabinet system was established before the war. Until 1885 (Meiji 18), the powerful Satsuma and Cho-shu clans made appointments freely and sometimes for private reasons.<sup>17</sup> The “general regulations of each ministry of government” of 1886 stipulated the organization and authority of each ministry and established the offices of

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<sup>14</sup> NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 15, para. 1 (Japan). “The people have the inalienable right to choose their public officials and to dismiss them. All public officials are servants of the whole community and not of any group thereof. Universal adult suffrage is guaranteed with regard to the election of public officials. In all elections, secrecy of the ballot shall not be violated. A voter shall not be answerable, publicly or privately, for the choice he has made.” *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> NISHIO, *supra* note 1, at 65–79.

<sup>17</sup> *Id.* at 70–76; TOSHIYUKI KANAI (金井利之), GYŌUSEIGAKU KŌUGI-NIHON KANRYŌUSEI WO KAIBŌUSURU, CHIKUMA SHINSYO (行政学講義—日本官僚制を解剖する) [ADMINISTRATION LECTURE – INVESTIGATING ON JAPANESE BUREAUCRACY] 41–47 (2018). Satsuma (薩摩), a Japanese feudal domain (*han*) in southern Kyushu noted for its role in Japan’s modernization. Chōshū also played a particularly prominent role in the events leading up to the Bakumatsu period and the Meiji Restoration, and various figures from Chōshū went on to play prominent roles in government and business into the Meiji period.

government officials, such as vice minister, secretary, clerk, director, counselor, bureau deputy director, trial, department head, and genus. In 1887, the “censored examination trial and apprentice rules” and “disciplinary service discipline” were established. The contents of these rules created the framework for the recruitment examination, as well as the discipline and undetermined loyalty obligations of civil service officers. Then, in 1893, regulations were created for the “appointment of civil servants” and “civil service examination rules” and the recruitment process of civil servants and officials under the consular officers was changed to a modern competitive examination system that abolished prior-used privileges and preferences for Tokyo Imperial University graduates.<sup>18</sup> Graduates of Imperial University could be employed without examination as part of the privileged measures until then.<sup>19</sup>

One characteristic of the pre-war civil service system is that officials were “government officials of the emperor” as prescribed in the Meiji Constitution. The Meiji Constitution stipulated under Article 10 that “the Emperor determines the organization of the different branches of the administration, and salaries of all civil and military officers, and appoints and dismisses the same.”<sup>20</sup> Exceptions especially provided for in the present Constitution or in other laws, shall be in accordance with the respective provisions (bearing thereon).<sup>21</sup>

Also, under the former constitution, the Cabinet, as a panel, and the assistant department of the Prime Minister, as a government agency, were not distinguished as their own entities, but were both considered departments of the Cabinet.<sup>22</sup>

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<sup>18</sup> See Order for Imperial University (帝国大学令), Meiji 19, March 2, Chokurei No.3. (明治十九年三月二日勅令第三号), [http://www.mext.go.jp/b\\_menu/hakusho/html/others/detail/1318050.htm](http://www.mext.go.jp/b_menu/hakusho/html/others/detail/1318050.htm). The University of Tokyo was founded in 1877 and changed its name to Imperial University (1886–1896) then Tokyo Imperial University (1897–1947) and it is now again the University of Tokyo (1947–current).

<sup>19</sup> MASAMICHI ROYAMA (蛸山政道), *KINDAI KANRI SEIDO NO HATTATSU-SEIDO HIKAKUTEKI KENKYŪ* (近代管理制度の発達—比較制度的研究) [COMPARATIVE SYSTEM RESEARCH, DEVELOPMENT OF MODERN MANAGEMENT SYSTEM IN JAPAN] 37–38 (1951).

<sup>20</sup> MEIJI KENPŌ [KENPŌ] [MEIJI CONSTITUTION], art. 10 (Japan) (“The Emperor determines the organization of the different branches of the administration, and salaries of all civil and military officers, and appoints and dismisses the same. Exceptions especially provided for in the present Constitution or in other laws, shall be in accordance with the respective provisions (bearing thereon).”).

<sup>21</sup> *Id.*

<sup>22</sup> AKIKO IZUMO (出雲明子), *KŌUMIN SEIDOKAIKAKU TO SEIJISYUDŌ: SENGŌ NIHON NO SEIJININYŌUSEI* (公務員制度改革と政治主導：戦後日本の政治任用制) [POLITICAL LEADERSHIP AND

### B. *Reform on Personnel Division*

Before the war, there were no departments that were responsible for centralized personnel administration.<sup>23</sup> Administration was divided and handled according to expertise: the legal bureau managed the structure of the system;<sup>24</sup> the Ministry of Finance controlled salaries;<sup>25</sup> the Examination Committee conducted the qualifying examinations; and the Limiting Committee handling firing of personnel.<sup>26</sup>

After Japan's defeat in 1945, various institutional reforms were implemented by GHQ (General Headquarters, the Supreme Commander for the Allied Powers).<sup>27</sup> A significant institutional system change came out of those reforms with respect to the civil service officials and public servants' system. The GHQ adopted the so-called "indirect governance" type system, and thus the military and *zaibatsu* (large Japanese business conglomerates) were dismantled.<sup>28</sup> However, the bureaucracy remained as is, since the bureaucracy was the primary implementer of the postwar reformation. The primary difference in the bureaucratic system before and after World War II was the change to the basis of the public official's system from imperial decree to legislation of the National Assembly. The National Public Service Act that reflected that change was enacted in 1947.<sup>29</sup>

Initially in 1947, the Temporary Personnel Committee was established as a central personnel administration agency.<sup>30</sup> The committee attempted to

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CIVIL SERVICE SYSTEM REFORM: A POLITICAL APPOINTMENT SYSTEM AFTER WAR IN JAPAN] 195 (2014). After the War, the appointment of Cabinet Ministers is done as follows: the members of the cabinet must all be civilians and no legislative confirmation is needed. The constitution says that the majority of the ministers must be Diet members, but practical politics show that most of all ministers to be Diet member, and usually members of the majority party in the House of Representatives. The prime minister is empowered to appoint and dismiss his Cabinet Ministers at any time.

<sup>23</sup> Bunkan Ninyō Rei (文官任用令), Taisho 2, August 1, Chokurei No. 261. (大正 2 年 8 月 1 日勅令第 261 号). National Personnel Authority was established in 1948. National Public Service Act, Act No. 120 of 1947.

<sup>24</sup> Known as Hōusei-kyoku (法制局).

<sup>25</sup> Known as Okura-shō (大蔵省).

<sup>26</sup> Known as Examination Committee (Shiken Iinkai, 試験委員会), Limiting Committee (Bungēn Iinkai 分限委員会).

<sup>27</sup> See NISHIO, *supra* note 1, at 65–79; IZUMO, *supra* note 22, at 85–162.

<sup>28</sup> See NISHIO, *supra* note 1, at 76.

<sup>29</sup> YUKIO NOGUCHI (野口悠紀雄), 1940 NEN TAISEI, ZŌUHOBAN (1940 年体制—増補版) [SYSTEM OF THE 1940-UPDATED] (2010).

<sup>30</sup> Rinji Jinji Iinkai (臨時人事委員会). Showa 22, October 21, Law No. 120, National Public Service Act. NISHIO, *supra* note 1, at 108–09.

introduce a positioning system that would guarantee scientific personnel administration (scientific management of personnel administration). Furthermore, the civil service impeachment system was implemented as the primary democratic control system for the bureaucracy.<sup>31</sup>

In 1948, the National Public Service Act was revised, and the Personnel Committee became an independent department for personnel administration. Furthermore, ministerial secretaries were designated as general positions instead of being specifically classified by range of duties, difficulty, and expertise, as was the case under the prior-enacted Position Classification Plan Act.<sup>32</sup> The provision allowing impeachment of civil servants was also deleted from the law.<sup>33</sup> The intentions of the Huber Administrative Advisers to Japan Human Resources Administration were largely reflected in those changes. The same advisory group also strongly suggested that classification of positions be selected based on detailed job descriptions. Although the position of employment law was established according to the advice of the advisory group, the law was never enforced for over half a century and thus was decommissioned in 2007.

By 1948, after the war, the basic framework for public servants was settled. And after that, the structure did not change significantly for more than sixty years. The major changes from the pre-war period to the post-war period was the democratization of the bureaucracy system, which implied public servants would follow political decisions.<sup>34</sup>

The basis for personnel affairs of bureaucrats is based on the premise of the high independence of the National Personnel Authority. The National Personnel Authority is responsible for the maintenance of fairness and neutrality of personnel administration in conducting recruitment tests, recommendations for salary based on the equilibrium between the public and private sectors; public service training; disaster compensation; impartial examinations; and public service ethics review (since 2000) with the

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<sup>31</sup> NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 15, para. 1 (Japan).

<sup>32</sup> Job Classification Act (職階法), Kokka Kōmuin no Shokkaisei ni kansuru Hōuritsu, Shōwa 25, May 15 Act No. 180. (法律第百八十号 (昭二五・五・一五) 国家公務員の職階制に関する法律). NISHIO, *supra* note 1, at 112–113; SHO KAWATE (川手撰), SENGŌ NIHON NO KŌUMUIN SEIDO SHI (戦後日本の公務員制史) [HISTORY OF CIVIL SERVANT SYSTEM AFTER WAR IN JAPAN] 37–38 (2005).

<sup>33</sup> NISHIO, *supra* note 1, at 77.

<sup>34</sup> *Id.* at 78.



appropriate authorities.<sup>35</sup> The actual appointment of the staff was left to each ministry, and the involvement in individual personnel affairs by the National Personnel Authority was limited.<sup>36</sup> Furthermore, regarding the management of the fixed numbers of officials of each ministry, the authority is given to the administrative agency (i.e., Ministry of Internal Affairs and Communications) and not the personnel committee (i.e., the National Personnel Authority).<sup>37</sup> The National Personnel Authority has only had the authority to conduct constant management by grade salary.<sup>38</sup> In 1965, ILO No. 87 was ratified, and the Prime Minister became the official employer of public servants.<sup>39</sup> The National Personnel Authority increasingly disappeared from the supervision of the entire personnel administration, and thus, human resources for public servants have shifted to the division structure.<sup>40</sup>

Bureaucrats are generalists who implement coordinating activities of vast content, and such coordinating activities used to be fully delegated to bureaucrats.<sup>41</sup> Since the reformation of public servants' system is relatively recent, it can be said that such a bureaucracy as a generalist has been maintained for a long time.

### III. ANALYSIS OF THE OPERATION OF THE LIMITED POLITICAL APPOINTMENT SYSTEM AND ATTEMPTS AT ADMINISTRATIVE REFORM DURING THE ONE-PARTY DOMINANT REGIME OF THE LIBERAL DEMOCRATIC PARTY

After World War II, Japan became a democratic government in outward form and embodied the principles of constitutionalism, democracy, and legalism.<sup>42</sup> However, the dominant one-party regime of the LDP has

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<sup>35</sup> *Id.* at 114–15.

<sup>36</sup> *Id.* at 78.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Ratifications of C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) in force in Japan on June 14, 1965. See, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300\\_INSTRUMENT\\_ID:312232](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312232). NISHIO, *supra* note 1, at 115.

<sup>40</sup> *Id.* at 114–15.

<sup>41</sup> *Id.* at 202. See also Matsushita, *supra* note 12, at 79–80. Iio explains the situation as Bureaucratic Cabinet. See JUN IIO(飯尾潤), SEIKYOKU KARA SEISAKU HE: NIHON SEIJI NO SEIJIYUKU TO TENKAN (政局から政策へ: 日本政治の成熟と転換) 36–39 (2008). Bureaucratic Cabinet (官僚内閣制) is a word created by Keiichi Matsushita. See MATSUSHITA KEIICHI, KOKKAI NAIKAKUSEI NO KISO RISON (国会内閣制の基礎理論) 200–12 (2009).

<sup>42</sup> SHO KAWATE, *supra* note 32, at 62–79.

continued for a long time, and thus, from the viewpoint of legalism,<sup>43</sup> legislative and judiciary powers, as well as administrative guidance by the bureaucracy, were frequently used. To support post-war reconstruction and economic growth, expansion and specialization of administrative functions were pursued, and the now-typical Japanese marvel of the administrative state has emerged. An analysis of that era shows that autonomous government has already been established in Japan.

The relationship between the ruling party and the Cabinet for the process of policy formation in Japan is embodied in the dual power structure.<sup>44</sup> Under the one-party dominant system of the LDP, the Cabinet needs to obtain approval of the ruling party before the Cabinet can give its own approval. Besides, through the mediation of the dual power structure, administrative bureaucracy, which should support the Cabinet initially, actually has a chance to override the political will of the ruling party. It has been observed that the Cabinet has been left behind in this process, and that government has become a “party-bureaucratic government.” Thus, the cabinet has been relegated to just a follower of the policy implemented by the party and bureaucracy.<sup>45</sup>

The National Personnel Authority gives each ministry and agency the specific authority of recruitment within each entity. Even so, it has been an autonomous bureaucracy.<sup>46</sup> After the World War II, through the postwar reform of the political system, and until the 1990s, political appointment of members of the bureaucracy, which was established under the long political power of the LDP, was extremely limited. In other words, political appointment of senior officials that are not based on the National Personnel Act was the extraordinary and exceptional case.<sup>47</sup> It was also rare for the Minister to select officials or appoint private citizens as political appointees.<sup>48</sup>

Personnel affairs were managed exclusively by each ministry, and the pre-arrangement of re-employment in the private sector after retirement for bureaucrats was also included as part of the personnel affairs of each ministry.<sup>49</sup> In addition, there was minimal personnel movement across

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<sup>43</sup> REIKO OYAMA (大山礼子), *HIKAKU GIKAI SEIJIRŌN-WESTMINSTER MODEL TO OUSHU TAISHUGATA MODEL(比較議会政治論)* [COMPARATIVE PARLIAMENTARY POLITICS] 226 (2003).

<sup>44</sup> SOGA, *supra* note 1, at 154.

<sup>45</sup> *Id.*

<sup>46</sup> NISHIO, *supra* note 1, at 135.

<sup>47</sup> IZUMO, *supra* note 1, at 47, 79.

<sup>48</sup> *Id.* at 79.

<sup>49</sup> The “parachuting” of senior officials to governmental corporations or corporations was criticized as

different ministries and agencies.<sup>50</sup> However, since each party commonly supported the Cabinet centralizing executive personnel affairs, the Cabinet Personnel Bureau, as mentioned later, was established in 2014.

Bureaucratic reformation was attempted repeatedly throughout the postwar period. With the amendment of the Constitution after the war, implemented reforms included the introduction of the parliamentary cabinet system, the civil servant system, and the local autonomy system.<sup>51</sup> However, since there were always bureaucrats involved throughout the implementation of its reformation, it has also been acknowledged that the bureaucracy system itself was not affected as much as it could have been.<sup>52</sup>

The concept of political appointment was not used; however, “special occupation,” which includes freely appointed positions, was always targeted for reduction.<sup>53</sup> During the postwar reform, changes were aimed at improving the perception of the National Assembly by requiring strict adherence to public service regulations for public servants. After some amount of success in that endeavor, the next big issue to emerge has been the increasing influence of the Cabinet as an administrator and the Prime Minister himself.

The special administration research organization established under the Ikeda Cabinet in 1962 addressed the need to respond to new administrative demands such as water source development and metropolitan area development.<sup>54</sup> As part of the administrative reformation, the organization proposed strengthening the function of the Cabinet, transferring budget compilation rights from the Ministry of Finance to the Cabinet Office, establishing the Management and Coordination Agency, arranging collusion

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*Amakudari* (天下り). But in fact, the Minister's Secretariat at each government office manages the personnel affairs of bureaucrats, including post-retirement positions, until they reach 70.

<sup>50</sup> It is also called *Tatewari* (縦割り). NISHIO, *supra* note 1, at 132–34.

<sup>51</sup> The amended Constitution of the Empire of Japan was promulgated as the Constitution of Japan when it received the emperor's assent on November 3, 1946, and came into effect on May 3, 1947. The Constitution of the Empire of Japan was fully revised by completing the procedures for amending the constitution defined in the Article 73, and newly called the Constitution of Japan, but the constitutional amendment, which had been conducted following the procedures defined by the Meiji Constitution (Constitution of the Empire of Japan), was merely expedient and perfunctory, and practically speaking, the Constitution of Japan was “newly established,” not the amended version, and it had “no substantial” legal continuity with the Constitution of the Empire of Japan.

<sup>52</sup> Nishio, *supra* note 1, at 139.

<sup>53</sup> Special occupation is applied to a position with heavy responsibility of policy making and there are not many positions for special occupation. IZUMO, *supra* note 1, at 178–83, 192.

<sup>54</sup> NISHIO, *supra* note 1, at 139–40.

competition affairs, and others.<sup>55</sup> Among them, it was also suggested to improve general personnel management of public servants.<sup>56</sup> At that time, however, staff rearrangement and salary reduction were not carried out and the highly technical public officials' system was not reformed; instead, the decentralized personnel system of the central government ministries and agencies was maintained.<sup>57</sup> At that time, Japan was experiencing high economic growth, and so they recognized the necessity of maintaining such a bureaucratic system.

Then, the second special administration research organization implemented various reformations after 1980. The second special administration research organization, which was established in March 1981, issued a basic report in the following year.<sup>58</sup> In the first report, it specified potential areas for change to respond to change, simplify and improve efficiency, and ensure reliability, which all related to public officials' issues.<sup>59</sup> However, bureaucratic organization and personnel reformation were not implemented in earnest until the late 1990s.<sup>60</sup>

It is not that there were no efforts at reformation; in the 1980s, the special administration research organization attempted to implement some initiatives on reformation and there were attempts for politics to take the lead in reformation.<sup>61</sup> But the public servant system certainly showed inherent resistance in the progress of reform such as privatization, deregulation, decentralization, and information disclosure. The reform did not proceed easily because it was almost impossible to plan and implement reform proposals without the minimum consent of public servants. That being said, a bureaucratic system organized based on meritocracy must still follow the decisions of elected politicians because their decisions are given legitimacy by virtue of the democratic processes that chose them—elections. The enactment of public official ethics law and restrictions on reemployment following public criticism showed that political power, rather than

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<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> NISHIO, *supra* note 1, at 140–41.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> NISHIO, *supra* note 2, at 182.

government-led efforts, has been more highly supported by the public opinion.<sup>62</sup>

#### IV. CHANGE IN 1993: THE LEADERSHIP OF THE PRIME MINISTER'S OFFICE AND THE CHANGE OF PERSONNEL AFFAIRS FOR SENIOR GOVERNMENT OFFICIALS

In August 1993, the Hosokawa Cabinet was born.<sup>63</sup> While the movement to strengthen the Cabinet's functions had fallen one step further behind, the special division of the Third Temporary Administrative Reform Promotion Council tried to strengthen the operational functions of the Cabinet Secretariat and took special notice of the aide system.<sup>64</sup> The assistant (aides) system already existed in the Cabinet, but the special division aimed "to dare to locate on a legal basis" the establishment of the aide.<sup>65</sup> At Prime Minister Hosokawa's strong urging, the new party Sakigake's Deputy President Hideyuki Tanaka was designated as a special assistant.<sup>66</sup> In practice, the position functioned as an unpaid private assistant to the Prime Minister because it was necessary to revise the Cabinet Act. The main work of the Special Assistant (Advisor) was to assist in making policy speeches to the Diet and speeches responding to questions in the Diet.<sup>67</sup> Prime Minister Hosokawa said that he was hoping for the establishment of a minister-level aide system, starting with such a private assistant, and the referee (back then) also supported this movement.<sup>68</sup> Three special assistants were also placed at the Murayama cabinet following the Hosokawa Cabinet, and the three special assistants were appointed from each party of the LDP, the Socialist Party of Japan, and the New Party Sakigake.<sup>69</sup>

In introducing the assistant to the Prime Minister, there were discussions and conflicts within the government over issues such as how to limit the authority of the assistant within the role of staff advising the prime minister about policy planning and whether or not to admit the substitution of

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<sup>62</sup> *Id.* at 182–83.

<sup>63</sup> As a result of the July 1993 general election, the single-party rule of the Liberal Democratic Party, which had continued since 1955, collapsed and ushered in an era of coalition governments and Hosokawa cabinet replaced the LDP's regime which has continued for 38 years in coalition with seven parties. The birth of the coalition was described as "Japan's New Era" at that time in 1993.

<sup>64</sup> The Third Temporary Administrative Reformation Advancement Committee (第三次臨時行政改革推進審議). NISHIO, *supra* note 1, at 142.

<sup>65</sup> IZUMO, *supra* note 3, at 277.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 278.

the prime minister's general adjustment right by the special assistant, as well as the debates over the appointment of civilians to the assistant system.

A. *The Amendment of the Cabinet Act to Introduce the Assistant System*

The Prime Minister's Assistant System, which is currently institutionalized, was created to make the assistant position equivalent to the Chief Cabinet Secretary. The appointment right for the Assistant was reserved for the Cabinet, to be made through formal decisions.<sup>70</sup> It was also decided that Diet members can hold concurrent positions as assistants.<sup>71</sup> The examination of this assistant system was carried out under the Murayama Cabinet (1994-1995) continued to be considered under the Hashimoto Cabinet (1996-1998), and a draft amendment of Cabinet Act was submitted to the Diet in May 1996.<sup>72</sup>

In response to the revision of the Cabinet Act, a counter-proposal to the proposed revision of the Cabinet Act was issued requesting further authority of the prime minister's assistant,<sup>73</sup> but there was no opposition to creating the system itself. In other words, the oppositions were as such: opposing the introduction of the assistant system without strengthening the prime minister's power; the desire to strengthen the role of the assistant itself; opposition to say that all or majority should be members of the parliament; and requesting the assistants to be full-time.<sup>74</sup>

Despite being first examined as a possibility after World War II, there are significant differences in the current assistant system from the system that was not introduced.<sup>75</sup> For example, there is the fact that concurrent posts with parliamentarians are permitted—i.e., a parliamentarian can be an assistant and can expand the choices of the prime minister.<sup>76</sup> Also, the selection of the assistants reflects the balance of power among the intraparty factions rather than policy knowledge and the ability of the candidates, similar to the situation

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<sup>70</sup> *Id.* at 282.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 281–82. For detailed legislative procedure of Japan, see Mayu Terada, *Hou no tsukurare Kata* (法の作られ方) [How to Make Legislation], in INTRODUCTION TO LEGAL SCIENCE (法学入門) 3–11 (Masaki Ina, Mayu Terada et al. eds., 2019).

<sup>74</sup> IZUMO, *supra* note 3, at 281.

<sup>75</sup> *Id.* at 282.

<sup>76</sup> *Id.* at 282–83.

of parliamentary ministers served by congressional parliamentarians.<sup>77</sup> In addition, the government repeatedly explained that establishing this assistant system was not going to change the existing system of Chief Cabinet Secretary, Deputy Secretary, and Cabinet Secretariat, among others.<sup>78</sup>

*B. An Attempt of Administrative Reform—Discussion on “The Shape of This Nation”<sup>79</sup>*

The final report of the Administrative Reform Council, which, together with the reform of the central ministries and related decentralization reforms, aimed to fundamentally change the “the shape of this nation” since the Meiji era, said, “Upon the accomplishments achieved by the Japanese people in the past, in order to form a more free and fair society, we will try to rebuild the form of this country.”<sup>80</sup>

The administrative reform conference focused on (1) the shape of the national structure in the twenty-first century;<sup>81</sup> (2) how to reorganize the central ministries based on that; and (3) the specific measures for strengthening the function of the office of the Prime Minister. The final report was made on December 3, 1997.<sup>82</sup>

After that, the basic bill to reform central government ministries and agencies was promulgated on June 12, 1998, and a reform bill related to central government ministries was also established on July 8 of the same year.<sup>83</sup> To strengthen the Cabinet's functions, the administrative reform law demanded that the prime minister have the authority to take the initiative and that a reinforced cabinet office be established.<sup>84</sup>

<sup>77</sup> *Id.*

<sup>78</sup> Original wordings are Chief Cabinet Secretary (*Kanbo-Chokan*, 官房長官), Deputy Secretary (*Kanbo-fukuchokan*, 官房副長官), and Cabinet Secretariat (*Naikaku Kanbo*, 内閣官房). *Id.* at 282.

<sup>79</sup> The Administrative Reform Council differs from conventional councils in that it is chaired by the prime minister of that time Ryutaro Hashimoto himself. The expression, “the shape of this nation,” was repeatedly used in the final report released by the Administrative Reform Council.

<sup>80</sup> ADMINISTRATIVE REFORM COUNCIL, FINAL REPORT OF THE ADMINISTRATIVE REFORM COUNCIL (1997), <http://www.kantei.go.jp/jp/gyokaku/report-final/1.html>.

<sup>81</sup> Original wording is “*Konokunino-katachi*”-*no saikoutiku* (「この国のかたち」の再構築).

<sup>82</sup> See FINAL REPORT OF THE ADMINISTRATIVE REFORM COUNCIL, *supra* note 80.

<sup>83</sup> Chuōu Knachō-tou Kaikaku Kihōnhōu [Basic Act on Central Government Reform], Law No. 103 of 1998.

<sup>84</sup> TSUNAO IMAMURA (今村都南雄), CHUŌ SEIHU KAIAKU-GYŌSEI NO SLIMU KA, JULIST NO. 1161, (「中央政府改革—行政のスリム化」『ジュリスト』(有斐閣) [REFORMING CENTRAL GOVERNMENT – SLIMMING DOWN THE GOVERNMENT] 77 (1999)).

*C. Reform on Reorganization of Central Government Ministries and Strengthening the Cabinet Function*

The final report of the Administrative Reform Council (December 3, 1997), which formed the basis of the Basic Act on Central Government Reform, was aimed at rebuilding the “form of this country.” In other words, it was aimed at changing the postwar administrative system to an administrative structure adapted to the new era.<sup>85</sup>

Furthermore, under the Basic Act on Central Government Reform, which was drafted based on the final report of the Administrative Reform Council,<sup>86</sup> the fundamental reform of the existing ministries and agencies was deemed to have problems, and so it reinforced the Cabinet’s functions. It is written in Article 4, No. 2 of the Basic Act on Central Government Reform as follows:

To organize the new provincial ministry in accordance with the following points in order to fully demonstrate the functions that national governments should fulfill and to respond to major administrative tasks both domestically and abroad precisely and flexible.

A) Based on the principal duties that the administration of the country should take, one ministry should be responsible for administrative functions with comprehensiveness and comprehensiveness as much as possible.

B) Administrative functions that conflict with basic policy objectives or value system should be handled by different ministries and agencies as much as possible.

C) Administrative functions and authorities of each ministry shall be balanced as much as possible.<sup>87</sup>

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<sup>85</sup> The reform headquarters was obliged to focus on reforming the bureaucratic framework—including the realignment of the ministries and agencies and the establishment of executive agencies—because it was only given a year to draft relevant bills after the release of the final report by the Administrative Reform Council in late 1997.

<sup>86</sup> See FINAL REPORT OF THE ADMINISTRATIVE REFORM COUNCIL, *supra* note 80.

<sup>87</sup> Chuōu Knachō-tou Kaikaku Kihōnhōu [Basic Act on Central Government Reform], Law No. 103 of 1998, art. 4.



*D. Individual Reforms for Political Leadership with the Administrative Reform Act*

*1. Reorganization of Central Government Ministries*

In reviewing the “government’s compartmentalized public administration”<sup>88</sup> under the strong authority of ministries and agencies, the organization of twenty-two ministries and agencies of Kasumigaseki<sup>89</sup> were significantly reduced, the number of ministries and agencies was cut by half, and twelve provincial ministries were reorganized. As a result, the prime minister’s authority relatively rose, and the bureaucracy’s discretionary scope was scaled down.<sup>90</sup> According to the reorganization of ministries and agencies, the fact that the function of the Ministry of Finance was divided into four was one factor that strengthened the authority of the prime minister.

*2. Establishment of New Deputy Minister and Minister of Parliamentary Secretary System*

In 1999, the law on the revitalization of the Diet deliberations and the establishment of a politically-driven policy-making system was enacted, and the “parliamentary vice minister” system, which had been criticized as having little authority was abolished.<sup>91</sup> The act also abolished the system of having bureaucrats answer Diet questions in lieu of Cabinet ministers (the government committee system).<sup>92</sup> The government committee system is a system where government officials are appointed by the Cabinet to assist the Minister. Before the abolishment of this system, appointed director-level executive staff were able to answer the questions of the Diet members in the Diet. Thus, it was normal for executive officials who are bureaucrats with the authority to reply on behalf of the ministry to instead reply on behalf of the government as a whole.<sup>93</sup> The abolition of the system whereby bureaucrats

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<sup>88</sup> The integration and reorganization of government ministries and agencies was designed to eliminate the problems of bureaucratic sectionalism (*Tatewari-Gyōusei*).

<sup>89</sup> Kasumigaseki is an area in central Tokyo where many government offices are located.

<sup>90</sup> IZURU MAKIHARA (牧原出), *GYOUSEIGAKUSŌUSYŌ* No. 8 *GYŌUSEIKAIKAKU TO CHŌUSEI NO SISUTEMU* (行政学叢書 8 行政改革と調整のシステム) [ADMINISTRATIVE REFORM SYSTEM OF COORDINATION] 258–63 (2009).

<sup>91</sup> *Kokkai Shingi Kasseika Hō* (国会審議の活性化および政治主導の政策決定システムの確立に関する法) [Act on the Activation of Parliamentary Deliberation and Establishment of a Politically-Led Policy-Making System], Law No. 116 of 2001, at 181.

<sup>92</sup> *Id.*

<sup>93</sup> KYOKO RYU (笠京子), *KANRYŌUSEI KAIKAKU NO JYŌKEN* (官僚制改革の条件) [CONDITIONS FOR BUREAUCRATIC REFORM] 182 (2017). Explaining that the system showed the typical bureaucratic initiative.

respond on behalf of ministers during Diet interpellations was expected to stimulate Diet debate. At the same time, the Deputy Minister and the Parliamentary Secretary system, which introduced the political assistant function, has more than doubled the number of parliamentary ministers under the original system which was abolished. The new Deputy Minister and Minister of Parliamentary Secretary System have increased the executive power within administrative agencies over bureaucracy. Subsequently, the Deputy Minister System and Minister of Parliamentary Secretary System have been utilized, and the Minister's intention for the selection of personnel is sometimes reflected in selecting Deputy Minister and Minister of Parliamentary Secretary.

Specifically, those increased number of deputy ministers and parliamentary secretaries are attending policy-making councils and conferences, which are held to discuss important policy matters in each ministry. The number of policy meetings and conferences set by the Cabinet is also increasing,<sup>94</sup> and the meetings are often observed by the parliamentary secretaries and deputy ministers.<sup>95</sup>

### 3. *Strengthening the Function of the Cabinet*

Another pillar of important administrative (Hashimoto's) reform<sup>96</sup> that was carried out together with the restructuring of ministries and agencies was the strengthening of the Cabinet's functions. The strengthening of the functions of the Cabinet was advocated for as a solution to the divisional government-based system, that vertically divides the administration. For those who advocated for this solution, it was considered necessary to demonstrate leadership through strengthening the power of the prime minister.

As a result of the reorganization of the central government ministries in 2001, the Cabinet Office was established and the Cabinet Secretariat was

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During the period of the 1955 status quo, in which the politicians and the bureaucrats—namely, the ruling party and the administrative authorities—worked hand in glove, bills were compiled by the bureaucrats, leaving the Diet, as some have put it, as a “subcontractor” in the handling of draft legislation.

<sup>94</sup> See PRIME MINISTER'S OFFICE OF JAPAN, <https://www.kantei.go.jp/jp/singi/index.html> (last visited Mar. 1, 2019).

<sup>95</sup> E.g., *Information and Communications Council Postal Policy Committee Post Office Activation Committee (5th)*, MINISTRY OF INTERNAL AFFAIRS AND COMMUNICATIONS (May 9, 2018), [http://www.soumu.go.jp/photo\\_gallery/02koho03\\_03002488.html](http://www.soumu.go.jp/photo_gallery/02koho03_03002488.html).

<sup>96</sup> “Hashimoto gyokaku”—that is, the reform under the leadership of Prime Minister Ryutaro Hashimoto.

strengthened. In other words, under the revised Cabinet Act, “planning and planning of important policy policies of the country” was assigned to the Cabinet Secretariat.<sup>97</sup> Thus, if there is a policy issue that the Prime Minister has a strong interest in, it is now possible for the Cabinet Secretariat and the Cabinet Office to deal with policy proposals under the direct control of the prime minister, not by the relevant ministries.

#### 4. *Creation of Advisory Groups for the Prime Minister Under New Law*

Under the revised Cabinet Act, the prime minister delegated legislative authority to the Cabinet to issue basic policies on important policy matters such as security and fiscal and macro economy. As a “brain trust” to support the planning of the policy led by the Prime Minister’s office, a cabinet office directly under the prime minister was established as a higher-level organization apart from the vertical ministries such as finance, economic industry, and welfare workers. In the Cabinet Office, four strategic advisory groups were established: the Economic and Fiscal Advisory Council, the General Science and Technology Council, the Gender Equality Council, and the Central Disaster Management Council. Among these four councils, the Economic and Fiscal Advisory Council, in particular, contributed greatly to the leadership of the prime minister’s office during the Koizumi Administration.

#### *Charts*

<i>Date</i>	<i>Report or Act Establishing Change</i>
Dec. 1997	Final Report from the Administrative Reform Committee
June 1998	The Basic Act to Reorganize Central Ministries and Agencies Established
June 1999	17 Acts on Administrative Reform (Ministries and Agencies Restructuring) Established Partial Revision on Cabinet Act (Strengthening Cabinet Function) Act to establish Cabinet Office
Dec. 1999	61 Acts Related to Administrative Reform on Ministries and Agencies Established
Jan. 2001	Start of New Ministries System

<sup>97</sup> SOGA, *supra* note 1, at 142–43.

<i>Cabinet</i>	<i>Period of Control</i>	<i>Controlling Party</i>
Miyazawa Cabinet	Nov. 1991 – Aug. 1993	LDP: Liberal Democratic Party (自民党)
Hosokawa Cabinet	Aug. 1993 – Apr. 1994	New Party of Japan (日本新党)
Hata Cabinet	Apr. 1994 – June 1994	New Born Party, Shinseito (新生党)
Murayama Cabinet	June 1994 – Jan. 1996	Social Democratic Party of Japan (日本社会党)
Hashimoto Cabinet	Jan. 1996 – July 1998	LDP
Obuchi Cabinet	July 1998 – Apr. 2000	LDP
Mori Cabinet	Apr. 2000 – Apr. 2001	LDP
Koizumi Cabinet	Apr. 2001 – Sept. 2006	LDP
First Abe Cabinet	Sept. 2006 – Aug. 2007	LDP
Fukuda Cabinet	Sept. 2007 – Sept. 2008	LDP
Aso Cabinet	Sept. 2008 – Sept. 2009	LDP
Hatoyama Cabinet	Sept. 2009 – June 2010	DPJ: Democratic Party of Japan (民主党)
Kan Cabinet	June 2010 – Sept. 2011	DPJ
Noda Cabinet	Sept. 2011 – Dec. 2012	DPJ
Abe Cabinet	Dec. 2012 – Present	LDP

### *E. Postal Reform under the Koizumi Cabinet*

The Junichiro Koizumi Administration that was born in 2001 advanced the prime minister's role.<sup>98</sup>

In the background, there was also the influence of changes in the election system in 1996 that introduced a combination of single-seat constituencies and proportional representation.<sup>99</sup> This system is advantageous for the major political parties and disadvantageous for the small and medium political parties, but the rise of the Democratic Party of Japan has led to the consolidation of the parties into a two-party system. In addition, the Cabinet

<sup>98</sup> IZURU MAKIHARA (牧原出), KENRYOKU IKÔU-NAINIGA SEIJI WO ANTEI SASERUNOKA (権力移行—何が政治を安定させるのか) [POLITICAL POWER TRANSITION – WHAT MAKE POLITICS STABLE?] 1267–1379 (2013); *see also*, IZUMO, *supra* note 21, at 321–22.

<sup>99</sup> The Election Act was revised in 1994. The old system of electing members of the House of Representatives from medium-sized districts was replaced by a system combining small, single-seat districts with large proportional representation districts (300 members elected from single-seat districts under the single member plurality system and 180 elected from eleven separate electoral blocs under the proportional representation system). The system combining single-seat constituencies and proportional representation was first used in the lower house election of October 1996.

Office, which was created by the administrative reform, began to play a major role.

The effects of the administrative reforms enacted in 2001 were seen in the so-called postal general election that was held in 2005.<sup>100</sup> The privatization of the postal service was the biggest goal of the Koizumi administration and was a reform task Koizumi continued to advocate over the years. The actual postal service privatization began after Koizumi was re-elected in the LDP presidential election in September 2003.<sup>101</sup>

At the same time, however, the Koizumi administration coordinated with bureaucrats through appointing ministerial bureaucrats to the Cabinet Secretariat. However, the Koizumi administration did not move forward on the reformation of the bureaucratic system itself, and the public service system was not reformed.

*F. The Basic Bill on Reform of the National Public Service System in 2008—National Strategy Staff, Political Staff*

Revisions to the law during Koizumi's administration also strengthened the political leadership of the cabinet. The bill to revise the National Civil Service Act was enacted in June 2008.<sup>102</sup> Its goal was to strengthen political leadership by expanding the political appointment framework by arranging national strategic staff, political staff, and senior staff and promoting public and private personnel exchanges.<sup>103</sup> It also included a proposal for the institutionalization of senior bureaucrat's personnel management to the Cabinet Personnel Department.<sup>104</sup>

Article 5 paragraph 1 of the Basic Act of the Reform of the National Public Service System, that sets out the role of national civil servants under the parliamentary cabinet system, states that they should set up political staff

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<sup>100</sup> Prime Minister Junichiro Koizumi, the LDP succeeded in the election in 2005 by focusing on a single issue, the privatization of Japan's postal services. Koizumi dissolved the Lower House of Parliament after the Upper House voted down postal reform, prompting a snap election in August 2005. Koizumi defined the election as a "national referendum" on the postal privatization bills and even ordered the party leadership to field rival candidates in all constituencies of the 37 former LDP lawmakers who voted against the postal privatization bills in the lower house.

<sup>101</sup> RYU, *supra* note 85, at 232.

<sup>102</sup> Kokkakōmuin hōu no ichibu wo kaisei suru houritsu an [Bill to Amend National Public Service Act], Bill No. 62 of 2018 (Japan).

<sup>103</sup> IZUMO, *supra* note 21 at 334–35.

<sup>104</sup> *Id.*

and the national strategy to report directly to the prime minister, saying that “the government should strengthen political leadership under the parliamentary cabinet system.”<sup>105</sup>

V. STRENGTHENING THE CABINET’S INVOLVEMENT IN THE ESTABLISHMENT OF THE CABINET BUREAU OF PERSONNEL AFFAIRS IN MAY 2014 AND THE RISE OF THE VICE MINISTER AND PARLIAMENTARY SECRETARY SYSTEM

A. *Public Service System Reform After 2013*

After two administration changes, the National Civil Service System Reform Promotion Headquarters’ “On Civil Service System Reform in the Future” was issued on June 28, 2013.<sup>106</sup> It stated that incorrect political leadership should be corrected, and that it is necessary to clarify the role of “politics” and “bureaucracy.”<sup>107</sup> The decision also mentioned that establishing a broader sense of political leadership is necessary.<sup>108</sup>

In addition, as an actual system reform, a “draft bill to revise a part of national civil service system” decided by the Cabinet in 2009 recommended the followings:<sup>109</sup> (1) unified management for appointing top management officials; (2) an executive candidate development process; (3) establishment of the Cabinet Bureau of Personnel Affairs; and (4) designing a system that can be operated flexibly with respect to national strategic staff and political staff.

B. *Establishment of Cabinet Bureau of Personnel Affairs*

“Legislation Revising Part of the National Civil Service Act” was established on April 11, 2014, and the Cabinet Bureau of Personnel Affairs was established on May 30, 2014.<sup>110</sup>

The Cabinet Bureau of Personnel Affairs is an organization set up to centrally manage the personnel of national civil service executives in the

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<sup>105</sup> IZUMO, *supra* note 21, at 334.

<sup>106</sup> NATIONAL PUBLIC SERVICE SYSTEM REFORM PROMOTION HEADQUARTERS, FUTURE OF PUBLIC SERVICE REFORM (June 28, 2016), <http://www.gyokaku.go.jp/koumuin/sankou/11.pdf>.

<sup>107</sup> FUTURE OF PUBLIC SERVICE REFORM, *supra* note 106.

<sup>108</sup> *Id.*

<sup>109</sup> Kokkakōmuin hōu no ichibu wo kaisei suru houritsu an [Bill to Amend National Public Service Act], Bill No. 62 of 2018 (Japan).

<sup>110</sup> Establishment of the Bureau was done by the revision of Cabinet Act by Kokkakōmuin hōu no ichibu wo kaisei suru houritsu [Statute to Amend National Public Service Act], Law No. 22 of 2014 (Japan).

Cabinet Secretariat that were created by the Basic Law for the Reform of the National Civil Service System (approved in June 2008).<sup>111</sup>

Article 11 of the Basic Civil Service Reform Act states that “the government shall appoint a Cabinet Secretariat in accordance with the following provision and place a Cabinet Bureau of Personnel Affairs in the Cabinet Secretariat to make such affairs.”<sup>112</sup>

On May 30, 2014, the Cabinet Bureau of Personnel Affairs was established with the aim of collectively executing executive personnel affairs by the Cabinet, and one of the previous authorities of the National Personnel Authority was transferred to the new Cabinet Bureau of Personnel Affairs. The establishment of this Cabinet Bureau of Personnel Affairs was a result of civil service system reform over the prior fifteen years.<sup>113</sup>

Specifically, affairs related to salaries and personnel evaluations, clerical affairs related to the promotion of women’s activities, personnel training, and class-specific quotas, which had been conducted mainly by the National Personnel Authority until then, were moved to the Cabinet Bureau of Personnel Affairs. It was also decided that the Cabinet Bureau of Personnel Affairs was to review the overall organizations and quotas that were being examined by the Administrative Management Bureau of the Ministry of Internal Affairs and Communications.

*C. Utilization of the Vice Minister and Parliamentary Secretary System—The Shingikai Policymaking Process in Japan*

A key characteristic of policymaking conferences (otherwise known as Councils, or *Shingikai*) is that they have become heavily used in recent years by the vice minister and parliamentary secretaries. This point has been analyzed in various ways, but from the end of World War II to the time of Hashimoto’s reform in the mid-1990s, these “Councils” were meant to lead the bureaucracy.<sup>114</sup> The Councils were also used as mean for bureaucrats to

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<sup>111</sup> Kokka Kōmuin Seido Kaikaku Kihōnhō [Statute to Amend National Public Service Act], Law No. 68 of 2008 (Japan).

<sup>112</sup> The establishment of the Personnel Bureau delayed for several years.

<sup>113</sup> KANJI KAWABUCHI (川淵幹児), HOSOKU NI-NEN, NIAKAKU JINJIKYOKU KOKKAKŌUMUINSEIDO NO GENJYŌ TO TENBŌU (発足2年、内閣人事局 国家公務員制度の現状と展望) [TWO YEARS AFTER THE ESTABLISHMENT OF THE BUREAU] 100 (2016).

<sup>114</sup> MAKIHARA, *supra* note 82, at 78–83.

successfully make public policies that they would like to proceed go through by getting acceptance or approvals by the experts who are chosen by them.

However, this situation has changed, especially recently, due to the political leadership and enlargement of executive power.<sup>115</sup>

Specifically, the number of vice ministers and parliamentary secretaries who were founded as new positions attending policy meetings (conferences set by the Cabinet) has increased since the Second Abe administration.<sup>116</sup> This means that the Deputy Minister and Ministry Parliamentary Secretaries are often present at places where both experts and bureaucrats are discussing policies as a council, leading to a change in the administration of the council led by bureaucrats. Moreover, it is also characteristic of the policymaking conferences that there are more government officials who belong to the Cabinet Secretariat and can be concurrently appointed (dual-appointment).<sup>117</sup>

Many of these conferences are held in the form of “expert opinion councils.” Compared to the former style, the number of experts’ councils consisting only of administrative officials has decreased, and as a consultative body of the Prime Minister, policymaking conferences listed in the Cabinet Secretariat and the Prime Minister’s Office are increasing. Furthermore, there are many practical policymaking meetings that eventually lead to legislation from the conference, among other results. Looking at the increase in the attendance rate of the Deputy Minister and Parliamentary secretaries to such meetings, it is understandable why it is one factor of the increase in executive power.

## VI. ANALYSIS AND CONCLUSION

It can be argued that the current political leadership of the Prime Minister’s office under the Abe administration is built on the foundation established by the DPJ government that had the motto “political leadership.”<sup>118</sup> In the Democratic administration from 2009-2012 (see the

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<sup>115</sup> NAOTO NONAKA (野中尚人) & HARUKA AOKI (青木遥), *SEISAKU KAIGI TO TÖRÖN NAKI KOKKAI KANTEI SYUDÖ TIASEI NO SERITSU TO KÖUTAI SURU JUKUGI* (政策会議と討論なき国会 官邸主導體制の成立と後退する熟議) [POLICY CONFERENCE AND DIET WITHOUT DISCUSSION – COMPREHENSIVE DISCUSSION ON FORMATION OF BACKBOARD OF BUREAUCRATIC SYSTEM] (2016).

<sup>116</sup> *Id.*

<sup>117</sup> Professor Kengo Soga points out that the dual appointment of the officials to the Cabinet Office and his/her original ministry would make Prime Minister’s policymaking much easier.

<sup>118</sup> SOGA, *supra* note 1, at 179–80, 190–91.



chart, *supra*), there is a divided diet, as the National Assembly phenomenon appeared (Contorted Diet). This was a situation in which the ruling coalition commanded a majority in the House of Representatives while the opposition parties controlled the House of Councilors, making the passing of bills much harder for the ruling party DPJ.<sup>119</sup> Strengthening the political leadership<sup>120</sup> was aimed at the DPJ administration (2009-2012),<sup>121</sup> and a bill to strengthen policy planning and coordination functions of the prime minister's office, titled "politically led Legislation to reform part of the Cabinet Act" (So-called Political Leadership Establishment bill, obsolete) was also submitted.<sup>122</sup> In the end, however, these various laws, including the political leadership establishment law, were not passed. It has been speculated that the DPJ administration failed to make or establish a practical political leadership (prime minister-led system of policymaking).<sup>123</sup>

The Cabinet during the second Abe administration (2012 to present)<sup>124</sup> has promoted substantial political leadership by the prime minister's office,<sup>125</sup>

<sup>119</sup> SOGA, *supra* note 1, at 190–91.

<sup>120</sup> There is no concrete definition for political leadership in Japan. Political Leadership in administration is often described with political appointment (政治任用). See IZUMO, *supra* note 1, at 386. Soga depicts the trends towards political leadership as the leadership of the prime minister in the 2000 in Japan. See SOGA, *supra* note 1, at 190.

<sup>121</sup> Vitalizing Political Leadership was one of the electoral manifesto and a slogan to DPJ that time. Especially in Summer 2009 when DPJ defeated LDP in the election of the House of Representatives that enabled the change of government, five slogan was announced before the election by DPJ. Those were, 1. From government delegated to the bureaucracy, to a politician-led government. 2. From a two-track system with the government and in the ruling party to a unitary system of Cabinet-centered policymaking. 3. From the ministries' pursuit of their own interests to the pursuits of the national interest led by the Prime Minister's Office. 4. From the virtually organized society of vested interests to a horizontal society bound by human bonds. 5. From a centralized to a regional government. See, <https://jp.reuters.com/article/idJPJAPAN-10233820090727>.

<sup>122</sup> SOGA, *supra* note 1, at 190, The bill's original name is *Seifu no Seisakukettei ktei niokeru Seijisyudo no Kakuritu notame no naikakuhou tou no Ichibu wo kaisei suru houritsu an* (政府の政策決定過程における政治主導の確立のための内閣法等の一部を改正する法律案). This so-called Political Leadership Establishment bill was drafted by the Democratic Party administration, and Yukio Hatoyama then the prime minister Yukio Hatoyama (鳩山由紀夫) submitted a bill to the Diet in February 2010. Due to the confrontation between the ruling and opposition parties in the National Assembly, the bill has not been decided and held its status as continued deliberation in the House of Representatives. Then the ruling party (DPJ) defeated the 22nd House of Councilors General Election in the summer of 2010, and the ruling party became a majority split (twisting parliament) in the House of Councilors. For this reason, the cooperation of the opposition party became indispensable for establishing it, but since the opposition party was negative to the bill, withdrawal was approved at the main assembly of the House of Representatives on May 12, 2011, without establishment of the bill. See *Bill Deliberation Progress Information*, HOUSE OF REPRESENTATIVES: JAPAN, [http://www.shugiin.go.jp/internet/itdb\\_gian.nsf/html/gian/keika/1DAC6B6.htm](http://www.shugiin.go.jp/internet/itdb_gian.nsf/html/gian/keika/1DAC6B6.htm) (last visited Mar. 31, 2019).

<sup>123</sup> *Id.*

<sup>124</sup> The first Abe administration took its office from 2006 to 2007.

<sup>125</sup> NISHIO, *supra* note 1, at 207.

including the above-mentioned successful establishment of the Cabinet Bureau of Personnel Affairs in 2014.<sup>126</sup>

The strength of the bureaucracy in Japan and the tendency of such increase in political leadership or administrative enforcement seems extreme. This is because many government officials (bureaucrats) often (or almost always) make actual conference documents from scratch, and the agenda settings are adjusted internally by the officials before putting on to the conference.<sup>127</sup> The agenda settings sometimes have a very large political effect. There should be some coordinating activities with the Deputy Minister or Minister Parliamentary Secretaries or the Minister that exercises political leadership, but bureaucrats are able to persuade politicians with the facts and histories of what their offices have been handling so far.

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<sup>126</sup> KAWABUCHI, *supra* note 105, at 100.

<sup>127</sup> A recent interesting case in Shingikai (committee) policymaking case is about site blocking. Bunkatyo (Agency for Culture, 文化庁) government officials (not all of them) tried to form a committee that would in the end allow the government the site blocking within the scope of the interpretation of current law first and recommend them to make a law regarding site blocking of illegal websites; however, the members of the Shingikai did not agree with the conclusion because the government proposal was regarded unconstitutional to Article 21 sentence 2 of Japanese Constitution that states, “No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.” And discussion content of the committee and no report was made and the committee was suspended. See Kaizokuban Taizaku, *Tyūkan Matome Sakiokuri = Bulokking Hunsōu-Seihu Yōushikisyakaigi* (海賊版対策、中間まとめ先送り=ブロッキング紛争—政府有識者会議) [*A Government Panelists Meeting for Anti-Pirates Products Could Not Reach to Agreement about Site Blocking*], JIJI.COM (Sept. 19, 2018), <https://www.jiji.com/jc/article?k=2018091900719&g=pol>.

Then a half year later, in early 2019, Bunkacho proceeded to make a proposal to revise the intellectual property law to make all kinds of downloading activities on internet in Japan illegal (both criminal and civil penalties and responsibilities were set). Then the discussion in the Shingikai which is a permanent one and not an ad-hoc one could not again reach to the conclusion because the proposed revision was too broad and had a tremendous effect on peoples’ daily lives in Japan because usual internet activities like posting a screenshot of a website could be criminally illegal. Not only most of the experts on the committee were against the revision but many Associations for manga artists and creators, researchers of information law, Japan Architecture Association etc. made official statements for the proposed revision. Still, the Bureaucrats of Bunkacho decided to proceed with the original proposal and tried to persuade lawmakers by creating a special explanatory document that does not reflect the actual committee’s discussion results. The problem became political and since experts pointed out that the Bunkacho explanatory documents are doubtful for reflecting reality, although the bill was on the table of LDP committee to discuss and proceed for the Diet discussion, it was withdrawn for the current Diet session to propose. It can be analyzed that the bureaucracy is still strong and it still looks at Shingikai as their tool to proceed with their original plan. See *Japan Shelves Bill on Stricter Copyright Control*, MAINICHI JAPAN (Mar. 13, 2019), <https://mainichi.jp/english/articles/20190313/p2g/00m/0na/057000c>. See academic discussion in detail here at *Intellectual Property Law and Policy Institute (IPLPI) at Meiji University*, MEIJI UNIVERSITY INTELLECTUAL PROPERTY LAW INSTITUTE (last updated Feb. 19, 2019), <http://www.kisc.meiji.ac.jp/~ip/20190219seimei.html>

In this sense, it is certain that the increase in the number of attendees at the meeting of the political formulation by the deputy minister and minister parliamentary-secretaries has increased the presence of politicians (parliamentarians) at such policymaking conferences, but it cannot be easily said that it hinders bureaucratic policy formation.

However, it can also be said that it is no longer possible for an extreme bureaucratic leadership to form their own policymaking policies through the ministries, as the Cabinet Bureau of Personnel Affairs appeared, and it manages about six hundred senior executive posts.<sup>128</sup> Those government officials who care about their posts and look for successful completion of their career are concerned with the direction of the Prime Minister's office.<sup>129</sup> In that sense, political leadership seems to be spreading indirectly.

In Japan, it is customary that bureaucrats of ministries and departments are concerned with preparing replies for questions that might be raised in the National Assembly of the Diet.<sup>130</sup> The officials make pre-set detailed answers which are used in the Diet in response to those concerned questions.<sup>131</sup> The officials also make drafts of the enormous number of ministerial bills that are created by bureaucrats of ministries and submitted to the Diet. Such practices have not changed, and the phenomenon, which is sometimes criticized as parliamentary deliberations becoming oversimplified, has not changed fundamentally.

It is possible for the Deputy Minister and the Parliamentary Secretary to attend meetings held at ministries such as councils, which are also places for substantial policy formulation, to exert a certain influence on policy formation as democratic orthodoxy.<sup>132</sup> From the viewpoint of democracy—in

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<sup>128</sup> NISHIO, *supra* note 1, at 180–81.

<sup>129</sup> In Japan, there are central government's employment examinations for Class 1 (fast-track) and Class 2 officials. Career is the common name given to those who pass the Class I (fast-track) national civil service examination and are employed by the Central Ministry proper. See *National Civil Service Recruitment General Examination (University Degree Examination) (Excluding General Education Category)*, NATIONAL PERSONNEL AUTHORITY, [http://www.jinji.go.jp/saiyo/siken/sougousyoku/daisotsuteido\\_sougou/daisotsuteido\\_sougou.html](http://www.jinji.go.jp/saiyo/siken/sougousyoku/daisotsuteido_sougou/daisotsuteido_sougou.html).

<sup>130</sup> IZUMO, *supra* note 21.

<sup>131</sup> This situation is criticized as it would end up distorting the nation's parliamentary democracy. The politicians answering questions in the Diet with the answering papers prepared by the bureaucrats would undermine the meaning of Diet deliberations and even ultimately the authority of the Diet.

<sup>132</sup> KAZUMASA INABA (稲葉一将), SEISAKU KEISEI KINŌU WO YUSURU NAIKAKU TO YUSHIKISYA KAIGI, (政策形成機能を強化する内閣と有識者会議) [CABINET AND PANEL MEETING STRENGTH THE POLICY FORMATION FUNCTION] 37 (2015).

the sense that the politicians reflect public opinions—it may be considered beneficial for people who have concerns with the bureaucracy's policy leadership. The strengthening of the Cabinet's functions can also be evaluated with respect to tenets of democratic government. If we emphasize the lack of original orthodoxy in the Constitution of Japan, a stronger control of the bureaucracy by the Cabinet may be seen as appropriate and reasonable.<sup>133</sup>

However, there is a severe problem regarding the tendency to push through extreme policies (i.e., changing the interpretation of the government of Article 9 of the Constitution of Japan<sup>134</sup>) as a result of the recent exercise of executive power. Expansion of executive power may be a necessary change that can be justified in part by the sense of the bureaucratic organization control, but sometimes the executive power should be institutionally suppressed—especially when it appears to be an abuse of power as we now observe. The system of government has to maintain the expertise and autonomy of bureaucratic organizations so that they are balanced. The uncertainty of personnel rules of the Cabinet Bureau of Personnel Affairs, that is rumored to be influenced by the Prime Minister's office, should also be suppressed and clarified. Thus, a clear rule and decision-making process should be shown with regard to personnel matters.<sup>135</sup>

As seen above, setting up policymaking meetings under cabinet offices, with firm policy decisions to be included in those meetings, can be described as one of the important aspects of political leadership in recent years.<sup>136</sup> This phenomenon can be seen as a mixture of political leadership and bureaucratic autonomy, because the agenda setting and making of final reports of the meetings are left to the bureaucracy, taking advantage of administrative expertise to some extent. From the viewpoint of political leadership and the issue securing administrative expertise, and in consideration of the autonomy of the bureaucracy, we can see the situation of the enlargement of executive

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<sup>133</sup> There is a strong critic toward bureaucracy-led policymaking because it is viewed and analyzed that Constitution has not given a bureaucratic organization its own legitimacy. See TORU MORI (毛利透), TÔUCHI KOUZÔU NO KENPÔURON (統治構造の憲法論) [GOVERNMENTAL BODIES AND CONSTITUTIONAL THEORIES] 347–50 (2014).

<sup>134</sup> KATSUTOSHI TAKAMI (高見勝利), KENPÔ KYU-JYÔ KAISYAKU KAIKEN TO MEIBUN KAISEI, (憲法 9 条の「解釈改憲」と「明文改正」) [JAPANESE CONSTITUTION ARTICLE 9 - INTERPRETATION AMENDMENT AND REVISION] 155–64 (2007).

<sup>135</sup> Of course, abolishment of the Cabinet Bureau of Personnel Affairs could be a solution but under current political situation it is not practical to consider the option. There are critics over the bureau from a viewpoint of administrative scholar. See TOSHIYUKI KANAI, ADMINISTRATIVE STUDY LECTURE (2018).

<sup>136</sup> SOGA, *supra* note 1, at 152–56.

power is not extreme related to this matter. This can also be evaluated as changing from the “opaque decision” and “arbitrary decision by the bureaucracy” that were the subjects of criticism of the councils led by administrative bureaucrats in the administrative organization. In other words, it may be possible to positively evaluate the policymaking decisions that result from meetings attended by active members of the Diet who are selected directly by citizens and thus have democratic legitimacy.

It will be a serious problem when there appears a situation where the bureaucracy only looks closely at the intention of the Cabinet.<sup>137</sup> However, in general, it is appreciable that the transparency of the administration has increased and it can also be appreciated that it is rather good from the viewpoint of realizing the voices of the people with regard to Japanese-style political leadership that are appearing in the bureaucracy system towards the direction of prime minister-led system of policymaking.

Regarding this point, transparency of the administration has been largely achieved. The council led by politicians (lawmakers) who are selected by the citizens seems much more positively evaluated “than the bureaucrat-led council with their ‘opaque’ decisions” and “arbitrary decisions by the bureaucracy.” In that sense, it is certain that tendency towards policy implementation by the bureaucrats are more observed as prime minister-led system of policymaking and it leads towards the expansion of executive power in Japan, as we have seen so far. For a policy implementation, however, such changes that could be problematic because they lean or look too much at the intention of the Cabinet, in general, are not yet clearly observed.<sup>138</sup>

From the viewpoint of political leadership, there has been an increase in administrative expertise utilized, meetings that are set up with political

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<sup>137</sup> Surmise and judge (in Japanese, *Sontaku* 忖度) the intentions of the Cabinet is regularly done but sometimes it is reported that some problematic decision might have been done. For example, in March 2018, a scandal broke when media reported that the Finance Ministry had tampered with official documents submitted to the Diet so as to make their content consistent with Prime Minister Abe's responses in the Diet. This is a continuous scandal of *Moritomo Gakuen* (Moritomo School) that was reported in February 2017. It is about Prime Minister Abe and his wife might have been involved in the improper disposal of state-owned land to a school operated by an acquaintance of theirs. Prime Minister Abe strongly denied their involvement in sessions at the Diet then. See *Moritomo Gakuen*, JAPAN TIMES, <https://www.japantimes.co.jp/tag/moritomo-gakuen/> (last visited Mar. 30, 2019). For details, please read Masahiko Kinoshita, Tokujin Matsudaira & Mayu Terada, *2018 Global Review of Constitutional Law : Japan*, in 2018 GLOBAL REVIEW OF CONSTITUTIONAL LAW (Richard Albert et al. ed., forthcoming).

<sup>138</sup> Relationship between politicians and bureaucrats is traditionally deep but it is pointed out that bureaucracy still maintains its autonomy. NISHIO, *supra* note 1, 96–98, 190,

leadership, major policy decisions made, and attendance of vice ministers, to conferences.<sup>139</sup> But at the same time, it can be said that the bureaucracy is trying to lead the prime minister-led system of policymaking, considering its autonomy and the expertise of the administration in agenda setting and reporting compilation.

However, for highly specialized areas—such as the allocation of radio frequency and supervision of personal information protection, information disclosure, and personnel affairs<sup>140</sup>—administrative decisions, including policy-making, should be carried out by independent administrative organizations with a certain distance from the Cabinet.<sup>141</sup> Thus, an organizational mechanism should be created that respects the discretion and judgment of administrative experts, and expertise should be institutionally maintained to uphold the balance between bureaucracy and political power. From this point of view, it is better for the personnel organization to maintain its independence so as to not push through the prime minister's extreme policies, and suppress the executive power, and the settings of Cabinet Bureau of Personnel Affairs should be reconsidered.

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<sup>139</sup> NONAKA & AOKI, *supra* note 107.

<sup>140</sup> There is a history of independent administrative regulatory body in the field of radio frequency distribution (*Denpa kanri linkai*) which was established in 1950 and dissolved in 1952.

<sup>141</sup> There are discussions for independent regulatory body in Japan because all administrative bodies should be located under Cabinet according to the Article 65 of Constitution of Japan. For detailed discussions, see, Mayu Terada (寺田麻佑), *Sentan Gijyutu to Kisei* (先端技術と規制) [*Advanced Technology and Regulation*] 26 ADMIN. L. REV. (2018). See also Hiroki Harada (原田大樹), *Gyōusei linkai* (行政委員会) [*Administrative Commission*], 485 HŌGAKU KYŌUSITSU 72–80 (2018).

